CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Level

MARK SCHEME for the October/November 2012 series

9084 LAW

9084/42 Paper 4, maximum raw mark 75

This mark scheme is published as an aid to teachers and candidates, to indicate the requirements of the examination. It shows the basis on which Examiners were instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began, which would have considered the acceptability of alternative answers.

Mark schemes should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

Cambridge will not enter into discussions about these mark schemes.

Cambridge is publishing the mark schemes for the October/November 2012 series for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level components and some Ordinary Level components.

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Assessment Objectives

Candidates are expected to demonstrate:

Knowledge and Understanding

- recall, select, use and develop knowledge and understanding of legal principles and rules by means of example and citation

Analysis, Evaluation and Application

- analyse and evaluate legal materials, situations and issues and accurately apply appropriate principles and rules

Communication and Presentation

- use appropriate legal terminology to present logical and coherent argument and to communicate relevant material in a clear and concise manner.

Specification Grid

The relationship between the Assessment Objectives and this individual component is detailed below. The objectives are weighted to give an indication of their relative importance, rather than to provide a precise statement of the percentage mark allocation to particular assessment objectives.

Assessment Objective	Paper 1	Paper 2	Paper 3	**Paper 4**	Advanced Level
Knowledge/Understanding	50	50	50	**50**	50
Analysis/Evaluation/ Application	40	40	40	**40**	40
Communication/ Presentation	10	10	10	**10**	10

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Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the table at the foot of the page.

Indicative content for each of the questions follows overleaf.

Band 1:

The answer contains no relevant material.

Band 2:

The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.
OR
The candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.

Band 3:

The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial.
OR
The candidate adopts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules.
OR
The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

Band 4:

Where there is more than one issue, the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue.
OR
The candidate presents a more limited explanation of all parts of the answer, but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.

Band 5:

The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

Maximum Mark Allocations:

Question	1	2	3	4	5	6
Band 1	0	0	0	0	0	0
Band 2	6	6	6	6	6	6
Band 3	12	12	12	12	12	12
Band 4	19	19	19	19	19	19
Band 5	25	25	25	25	25	25

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Section A

1 Critically analyse the development and application of the remoteness of damage principle through cases in the law of tort.

Candidates are expected to trace the development of the principle that has become known as remoteness of damage through cases mainly related to the tort of negligence, but candidates will be given credit for pulling examples from any other area of the law of tort.

The statement underlines the fact that although there will undoubtedly be circumstances where someone will cause damage or loss, the law will not require that person to pay compensation for it. The difficulty has always been in determining what those circumstances are.

Candidates are expected to explain that the first test of remoteness was laid down in the case of *re Polemis* and that, in essence, liability was imposed for all direct physical consequences (direct consequence test).

The harsh line adopted in *re Polemis* was subsequently softened by the Privy Council in the case of *The Wagon Mound No. 1.* The new test for remoteness became that of whether the loss suffered was as a reasonably foreseeable consequence of the person's actions. Was the damage or loss of a type that was reasonably foreseeable at the time that the tort was committed?

Cases such as *Doughty v Turner Manufacturing Co, Hughes v Lord Advocate, Page v Smith* and *Margerson v JW Roberts* might be explored to indicate how the courts' approach with regard to the type of loss or damage suffered as a consequence of negligent acts has become less narrow as time has progressed.

Candidates should also explore the application of the rule to extent of loss (eggshell-skull cases) and risk of damage.

The only sensible overall conclusion can be that the more recent cases seem to take a more generous line.

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2 The rule in Rylands v Fletcher is redundant as an independent tort because the torts of negligence and private nuisance adequately protect interests between occupiers of adjacent premises.

With reference to case law, make a detailed examination and assessment of this view.

Candidates are expected to outline the elements of the tort and explain the circumstances in which it is used.

The question set requires candidates to comment on whether the tort fills a necessary gap in existing tort law.

What limitations were there to the existing fault-based tort of negligence that meant that it could not cover the same purpose? Strict liability.

What about the tort of nuisance; wasn't its scope sufficiently wide? Reference to accumulation and likeliness to cause injury.

Could the tort of trespass have helped out? Direct v non-direct interference.

Candidate responses that are limited to factual recall, however detailed, will be restricted to band 3 marks; critical assessment of the law is essential.

3 Pecuniary and non-pecuniary losses are treated differently in tort.

Discuss the approaches of courts in assessing compensation claims in tort and explain why they are considered necessary.

Candidates might preface responses by explaining that when making awards of damages in tort, the courts may have aims other than the general one of compensating victims. In addition, candidates should introduce and explain the concept of pecuniary and non-pecuniary losses and provide suitable examples of each.

Case law should be investigated to demonstrate how judicial approaches differ when losses are pecuniary or non-pecuniary. The method of calculating pecuniary losses could be explored and contrasted with the guidelines produced by the Judicial Studies Board for the calculation of non-pecuniary losses.

Candidates might go on to explore awards of non-compensatory damages and explore the circumstances under which nominal, contemptuous, aggravated or exemplary damages might be awarded in tort.

Purely descriptive responses without the requisite evaluation will be limited to marks within band 3.

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Section B

4 Discuss Kilby's potential liability as occupier of the premises for the injuries suffered by Sparks.

The Occupier's Liability Act 1957 imposes a common duty of care upon the occupier of premises to ensure the reasonable safety of visitors.

S2(2) of the 1957 Act provides that 'The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted to be there.'

Sparks sustained two injuries as an apparent result of the condition of the premises, so is Kilby liable under the terms of the legislation?

Sparks was invited to the premises to carry out electrical repair work, so S2(3) is also relevant. This provides that 'an occupier may expect that a person in the exercise of his calling will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do it'. As a qualified electrician, Sparks should appreciate the risk of shocks when working with electricity, so is perhaps liable for his own injury as a result of the electric shock because he has apparently failed to take even the most basic steps to avoid such injury, i.e. he did not switch off the power! In any event, should the oral warning given by Kilby have made him even more cautious?

As far as the injury to Sparks' back, liability is less than clear. Should Kilby have known that the hand-rail was liable to break at any time? Should a warning have been given to Sparks about the state of the hand-rail so as to enable him to take greater care for his own safety?

Clear, concise and compelling conclusions should be drawn by candidates.

5 Discuss the potential liability of Bill and the Livestock Health Institute for the farmers' losses.

Candidates should address their thoughts and commentary to the liability of a tortfeasor for the economic losses suffered by others as a consequence of his negligence.

A brief discussion of the elements of negligence may be entertained in order to put the candidate's response in context, but no more is necessary and thus will receive no credit. In this instance, Bill & Ben are employees of the Livestock Health Institute who would be vicariously liable for the negligent acts of employees committed while doing their job. However is there any evidence of Bill's negligence?

Candidates are also expected to address the issue of remoteness of damage and foresight of harm. Was the leak of contaminated water a foreseeable risk about which the Institute should have taken greater care in the circumstances?

Credit will be given to candidates who alternatively interpret the circumstances as potentially giving rise to liability in *Rylands v Fletcher* even if the notion of an accumulation of contaminated water might be considered tenuous.

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In principle, pure financial loss unaccompanied by any physical loss to person or property is not recoverable in tort, whereas economic loss which results from physical damage is recoverable. Known as the 'floodgates' argument, restriction on recovery for pure economic loss is justifiable on the grounds that it is undesirable to make a person liable for 'an indeterminate amount for and indeterminate time to an indeterminate class' (*Ultramares Corporation v Touche*). Candidates should consider the outcomes in the cases of *Weller & Co Ltd v Foot & Mouth Disease Research Institute, Spartan Steel & Alloys Ltd v Martin & Co* and *Junior Books v Veitchi* as a means of tracking and explaining developments.

Application to the case in hand suggests that the farmers should be compensated for their cattle and income dependant on the cattle.

Clear compelling conclusions are required.

6 Consider the respective liability in tort of Jack, Jill and Braithwaite as a consequence of this incident.

This question raises the issues of trespass to land and trespass to the person.

Candidates should recognise that when Jack and Jill attend the dance, they enter Braithwaite's premises under licence as visitors, not trespassers.

However, as soon as they begin to act anti-socially they abuse their right of entry and become trespassers. Candidates are expected to define trespass to land: a direct, unlawful interference with land in the possession of another. Braithwaite then gave them the opportunity to cease their antics and had they done so, although trespass to land is actionable per se, Braithwaite would probably have left it at that.

However, Jack's behaviour became threatening and it was at this point that he was man-handled by Braithwaite. Candidates will need to address the question as to whether his actions amounted to the reasonable physical force permitted to abate a trespass (the remedy of self-help) or whether he went too far and actually committed an act of trespass to Jack's person (*Harrison v Duke of Rutland*). He would clearly raise this as a defence to any action brought against him by Jack.

Candidates will need to define assault and battery as torts and consider whether either or both may have been committed by Jack, Jill and Braithwaite respectively. Did Jack's fist waving and threats put Braithwaite in reasonable fear that he was about to suffer the unlawful, physical contact required of a battery (*Collins v Wilcock*)? Did the physical force exerted by Braithwaite on Jack and by Jill on Braithwaite amount to a battery?

Clear, concise and compelling conclusions should be drawn by candidates.

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